JOHN F. DAVIS CLERK

No. 19

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

UNITED STATES OF AMERICA ..... Appellees

vs.

CHARLES PAUL, Director of Agriculture of the State of California and STANLEY MOSK, Attorney General, State of California, ... Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

AMICUS CURIAE BRIEF FOR THE STATE OF MISSISSIPPI

JOE T. PATTERSON, Attorney General of the State of Mississippi

JOHN L. HATCHER, Attorney for the Mississippi Milk Commission

INDEX

	Page
INTRODUCTORY STATEMENT	1
THE LEGAL PRINCIPLES INVOLVED IN THIS CASE	7
THE QUESTION OF JURISDICTION OVER THE FEDERAL ENCLAVE	10
THE CONFLICT BETWEEN FEDERAL AND STATE LAWS UNDER THE SUPREMACY CLAUSE OF THE CONSTITUTION	15
THE EFFECT OF STATE LAW UPON FEDERAL PROPERTY UNDER THE ASSIMILATIVE CRIMES ACT	20
CONCLUSION	22

TABLE OF AUTHORITIES CITED

Cases

Alabama v. King & Boozer, et al 314 U.S. 1 (1941)	14
City of Detroit et al v. Murray Corporation of America et al, 355 U.S. 489 (1958)	14
Curry, Commissioner of Revenue of Alabama v. United States et al, 314 U.S. 14 (1941)	14
Pacific Coast Dairy, Inc. v. Department of Agriculture of California et al, 318 U.S. 285, 63 S.Ct. 628, 87 L.Ed. 761 (1943)	9, 10, 14
Penn Dairies, Inc. et al v. Milk Control Commission of Pennsylvania, 318 U.S. 261, 63 S.Ct. 617, 87 L.Ed. 748 (1943)	8, 10, 17

TABLE OF AUTHORITIES CITED

Statutes

	Page
Federal:	
Agricultural Act of 1954, Section 204 (a), 68 Stat. 899	16
Agricultural Marketing Agreement Act of 1937, U.S.C. 610 (i)	16
Armed Forces Procurement Act of 1947, 10 U.S.C. 2301 et seq., 62 Stat. 21	15, 17
Article 1, Section 8, Clause 17 of the Constitution of the United States	7, 12
Article VI; Clause 2, Constitution of the United States	7
Assimilative Crimes Act, 18 U.S.C. 13	20
Mississippi:	
Sections 4157 and 4158, Mississippi Code Annotated (1942)	11
Sections 4560-141 through 4560-170, inclusive, Mississippi Code Annotated (1942)	2
Section 4560-155, Mississippi Code Annotated (1942)	2

Miscellaneous

House report No. 109, 80th Congress, 1st Session, Pages 6 and 8	17
House report No. 109, 80th Congress, 1st Session, Page 30	19

Page

House report No. 1688, 84th Congress, 2nd Session, Page 3 18

Report of Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas within the States, Volume 1, 1956, Page 70 13

Rule 42 of the Revised Rules of the U. S. Supreme Court 1

Senate report No. 571, 80th Congress, 1st Session, Pages 2 and 8 18

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. _____

UNITED STATES OF AMERICA — Appellees

vs.

CHARLES PAUL, Director of Agriculture of the State of California and STANLEY MOSK, Attorney General, State of California, — Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

AMICUS CURIAE BRIEF FOR THE STATE OF MISSISSIPPI

INTRODUCTORY STATEMENT

This Brief Amicus Curiae on the merits of this cause is being submitted by the State of Mississippi, through its Attorney General, and the Mississippi Milk Commission, an agency of the State of Mississippi, pursuant to the provisions of Rule 42 of the Revised Rules of the U. S. Supreme Court. The State of Mississippi believes that the determination of the legal questions involved in this case is of paramount concern to the citizens of the State of Mississippi and that to uphold

the decision of the United States District Court for the Northern District of California would be contrary to the best interest of the citizens of this State. By virtue of Rule 42 (4), the consent of the United States, Appellee, to the filing of this brief is not required, and it is respectfully requested that this Court permit this brief to be filed in this cause.

On May 11, 1960, the Legislature of the State of Mississippi enacted the Milk Commission Act, the same being Sections 4560-141 through 4560-170, inclusive, Mississippi Code Annotated (1942), as amended, which created the Mississippi Milk Commission, composed of the Commissioner of Agriculture and Commerce of the State of Mississippi and six other members representing milk producers, distributors, retailers and consumers, for the purpose of carrying out the provisions of said Act and gave said Commission the power to supervise, investigate and regulate the fluid milk industry in the State of Mississippi. The Mississippi Milk Commission was given the power to fix minimum producer, wholesale and retail prices throughout the State of Mississippi, and pursuant to said authority, the Commission has now divided the State of Mississippi into six marketing areas and has fixed minimum producer, wholesale, and retail prices within each of said marketing areas (Section 4560-155, Mississippi Code Annotated (1942), as amended).

The immediate question to be determined in this case will vitally affect the application of milk pricing orders of the Mississippi Milk Commission to sales of milk by licensees of the Commission to military installations owned by the United States Government. First, the Mississippi Milk Commission would like to state that it does not intend nor is it attempting to assert jurisdiction over any military installation or any agency or in-

strumentality of the federal government, but that the Commission does and can assert jurisdiction over its own licensees as to the resale price which they charge to their customers. The Commission controls not only the price at which the licensee purchases milk but also the price at which said licensee sells milk to other customers, no matter who that customer may be, and the remedy provided for a violation of the orders of the Commission is directed solely against the licensee in the form of revocation or suspension of the license, or assessment of a penalty in lieu thereof.

Although the immediate question concerns only the sale of milk to military installations owned by the federal government, the decision herein rendered would have a very broad affect in that it would establish a principle which would be applicable to the sale of milk to all federal agencies and instrumentalities within the State of Mississippi and the other states of the union. When you consider not only the military installations, but also the Veterans Administration hospitals, Indian reservations, the U. S. Corps of Engineers, the concessions on national parks, and other federal agencies and instrumentalities within this State, this problem becomes one of paramount importance.

There are now five (5) military installations located within the State of Mississippi which affect the marketing of milk within the State. The problem involved in the sale of milk to military installations can be best illustrated by reference to one of those military installations, the same being Keesler Air Force Base at Biloxi, Mississippi. This military installation is located within one of the six (6) marketing areas of the State of Mississippi, said marketing area being designated as the Gulf Coast Marketing Area, which area has been des-

clared to be a natural marketing area by both the Mississippi Milk Commission and the Secretary of Agriculture of the United States acting pursuant to authority contained in the Agricultural Marketing Agreement Act of 1937. Minimum producer prices are now fixed by the Mississippi Milk Commission and the United States Department of Agriculture, and minimum wholesale and retail prices are fixed by the Mississippi Milk Commission within this marketing area. The milk sold to this military installation during the year 1961 amounted to 22.6 per cent of the total packaged milk sales made in said Gulf Coast Marketing Area. This means that almost one-fourth of the dairy farmers' income is dependent upon the price for which milk is sold to this one military installation, and when the military contract is held by a milk dealer or handler located outside of the marketing area, this would amount to a complete loss of almost one-fourth of the Class I sales to the dairy farmers in the marketing area. Unless these military prices can be regulated, serious damage would result not only to the milk dealers or handlers, but also to the dairy farmers whose net income is determined by the utilization of milk at the wholesale and retail level, over which he has absolutely no control.

A real danger to the effective enforcement of the Milk Commission Act of the State of Mississippi lies in the existing sales of milk by milk dealers to the United States at lower prices than the price required for all other sales. The route of milk from the producer to consumer is a continuous one, and the evil effect of sub-standard prices to the federal government flows backward to play its part in undermining the intelligent production and orderly marketing that the state has declared essential to the public health. A primary pur-

pose of the Milk Commission Act is to insure a sufficient supply of wholesome milk to the consuming public and to insure an adequate return to the members of the dairy industry, which purposes cannot be accomplished unless the high cost of maintaining sanitary standards and standards of purity at the dairy farm is returned to the producer. If the federal government is permitted to purchase milk at sub-standard prices, the immediate result will be a loss to the processing plants, distributors and producers in the State of Mississippi. This being true, the Mississippi Milk Commission, in discharging its obligation to both the dairy industry and all the inhabitants of the State of Mississippi, would inevitably be forced to eventually raise prices to the consumer in the State of Mississippi. No matter how you look at it, certain people within the State of Mississippi will be severely damaged or injured by the federal government procuring milk at sub-standard prices.

In both the post exchanges and the commissaries the retail sales prices are substantially below competitive retail prices in the stores because purchasers pay no state or municipal taxes, and because the post exchanges and commissaries pay no income taxes, have their stores built for them, spend little for advertising or promotion, and use commissioned officers in the armed forces to manage the enterprises. This combination of freedom from local taxes, low overhead expenses, and intense competition between distributors willing to dispose of milk at by-product prices results in a resale price for fluid milk in post exchanges, service clubs and commissaries far below the comparable retail store price. To add injury, these commissaries often sell at a price below their own inventory price. It is a little wonder that

these commissaries sell such a tremendous volume of milk.

Also under military regulations, the milk purchased at a commissary is supposed to be utilized solely by service personnel and certain designated civilian personnel. However, these regulations have never been enforced and it is quite common for a service man or designated civilian living within a community to purchase milk at the commissary in large quantities and return to the community and distribute same to the entire neighborhood in which he lives. This creates instability and chaos within the entire city in which the military installation is located. This not only places the federal government in direct competition with private enterprise, which in itself is contrary to fundamental principles of law, but in addition gives this same federal government a tremendous price advantage in competition with such private enterprise.

The problem is a complex one. Commissaries were not created to make money. They are operated by government employees paid out of tax money, and their mark-up is supposed to cover shrinkage, and not operating costs. It is difficult to distinguish between those who have commissary privileges and those who do not have them, and, since there is no limit on purchases, such a distinction would not make a great deal of difference in any event. Thus, we find a serious situation where government stores maintained by tax money sell merchandise at ridiculously low prices in direct competion with stores and milk distributors who pay the taxes that keep the commissaries in business.

THE LEGAL PRINCIPLES INVOLVED IN THIS CASE

The legal authorities hereinafter cited, in relation to this problem of the sale of milk to federal agencies, usually deal with two principles or theories of law, which are as follows:

(1) The question of jurisdiction over the federal enclave whether the federal or state government exercises exclusive jurisdiction or both of them exercise concurrent jurisdiction over this federal territory. Article I, Section 8, Clause 17 of the Constitution of the United States, in effect provides that land cannot be acquired by the federal government without the consent of the state, which means that the federal government acquires only such jurisdiction as is ceded to it by the states. The statutes of each particular state which were in effect at the time of the acquisition of the property concerning the cession of jurisdiction by the state are appropriate in determining this question.

(2) The supremacy clause of the United States Constitution, which states that statutes of the United States Congress shall be supreme and must prevail over any state law which conflicts therewith (Article VI, Clause 2, Constitution of the United States). If there is no conflict between the state milk control regulations and the applicable federal procurement act concerning this particular sale of milk, then the state regulation would stand since there is no conflict with the federal act.

There have been only two decisions handed down by the Supreme Court of the United States concerning the applicability of state price fixing regulations on sales of milk by a milk dealer to a federal agency, both of these decisions being concerned with the sale of said

milk to military installations. Both of these decisions were handed down on the same date, March 1, 1943, and at first glance would seem to be directly in conflict as the result was exactly the opposite in each case. However, the decision in each case turned upon the first question stated above, that being the question of jurisdiction and the extent to which same had been ceded by the state government in each case. The case of *Penn Dairies, Inc. et al v. Milk Control Commission of Pennsylvania*, 318 U.S. 261, 63 S.Ct. 617, 87 L.Ed. 748 (1943), came up on appeal from the State of Pennsylvania and concerned the validity of the price fixing orders of the Milk Control Commission on the sale of milk by a licensee of the Commission to the military installation involved. In this case the land had been leased by the state to the federal government and it was conceded by the U. S. Attorney that the state had exclusive jurisdiction over the area occupied by the military installation. The Supreme Court held that the orders of the state Milk Control Commission were applicable and could be enforced by the state. On the question of jurisdiction, the court held in favor of the state. As to the question of the supremacy clause, the court stated that we may assume that Congress, pursuant to the supremacy clause, Article VI, Clause 2, could declare such state regulations inapplicable to sales of milk to the government, but that Congress has not so done, and that no clause in the Constitution, unaided by Congressional enactment, can be implied to prohibit such state regulations. The court stated that in the absence of Congressional consent there is an implied constitutional immunity of the federal government from state taxation and from state regulation of the performance by federal officers and agencies of governmental functions, but that

those who contract to furnish supplies and render services to the government are not such state agencies and do not perform governmental functions. The mere fact that nondiscriminatory regulation of the contractor imposes an increased economic burden on the government is no longer regarded as bringing the contractor within any implied immunity of the government from state taxation or regulation. The Constitution presupposes the continued existence of the states functioning in coordination with the national government, with authority in the states to levy taxes and to regulate their internal affairs and policies and that state regulations like state taxation inevitably imposes some burdens on the national government of the same kind as those imposed on citizens of the United States within the state borders.

To establish a conflict under the supremacy clause of the Constitution in the Penn Dairies case, the United States relied upon the Armed Forces Procurement Act which required competitive bidding in the purchase of supplies for the Army. The Supreme Court held that said statutes, being the federal statute and the state statute, are wholly consistent with the continued existence of such price regulations, and with the acceptance by government officers of the regulated price where that is the lowest bid, or the omission of competitive bidding in circumstances where local price regulations render it "impracticable to secure competition". Since the Armed Forces Procurement Act eliminated the requirement of competitive bidding where it was "impracticable to secure competition", the court held that there was no conflict under the supremacy clause.

The other case was *Pacific Coast Dairy, Inc. v. Department of Agriculture of California et al*, 318 U.S. 285, 63 S.Ct. 628, 87 L.Ed. 761 (1943), which came up on

appeal from the State of California concerning the validity of state price fixing orders on the sale of milk by a licensee to a military installation in the State of California. In this case the land was actually purchased by the federal government, and it was conceded and admitted by the attorney for the state that the federal government had exclusive jurisdiction over the federal enclave. Since the state has ceded exclusive jurisdiction to the federal government, the Supreme Court held that the state laws were inapplicable within the federal enclave of the military installation and that the court was bound to respect the relevant constitutional provision with the respect to the exclusive power of Congress over federal lands. Having disposed of the case on the ground that exclusive jurisdiction was in the federal government, it was unnecessary for the Supreme Court to consider the supremacy clause, but it should be kept in mind that on this same day this same Supreme Court held that there was no conflict between the Armed Forces Procurement Act and the state milk pricing regulations of Pennsylvania, which was decided in the Penn Dairies case.

Thus far, the two major legal principles involved, being the questions of jurisdiction and the supremacy laws, have been discussed together in order to give a complete analysis of the Penn Dairies case at one point in this brief without interruption. Hereafter, the two legal principles will be discussed separately.

THE QUESTION OF JURISDICTION OVER THE FEDERAL ENCLAVE

Neither the case of *Penn Dairies, Inc., et al v. Milk Control Commission of Pennsylvania*, supra, nor the case of *Pacific Coast Dairy, Inc. v. Department of Agriculture of California*, supra, can be relied upon by either

the United States or the State of California in support of their contentions on jurisdiction in the case now before this Court. In both of said cases the question as to which governmental authority had exclusive jurisdiction was conceded by the United States in one case and the State in the other, and a factual question was not presented for decision in either of said cases. In the case now before this Court, a factual question is presented on the question of jurisdiction, and the State of Mississippi concurs with the position taken by the State of California and believes same to be fully supported by the facts and the law presented in this case.

In the event that this Court makes a decision contrary to the position of the State of California on the question of jurisdiction, the State of Mississippi respectfully requests that the Court's opinion be so limited so as not to preclude the position taken by other states who might have completely different statutes concerning the cession of jurisdiction to the federal government. The statutes in Mississippi on this question, being Sections 4157 and 4158, Mississippi Code Annotated (1942), are as follows:

> 4157. The governor, upon application made to him in writing, on behalf of the United States, for the purpose of acquiring and holding lands or using any part of a public road of any county within the limits of this state for the purpose of making, building, or constructing levees, canals, or any other works in connection with the improvement of rivers and harbors or as a site for a fort, magazine, arsenal, dockyard, courthouse, custom house, lighthouse, post office, or other needful buildings, or for the purpose of locating and maintaining national military parks, or for any other public works or purposes accompanied by proper evidence of the purchase of such lands, or the con-

sent of the board of supervisors of the proper county for such public roads to be used for said purpose, is authorized for the state to cede jurisdiction thereof to the United States for the purpose of the cession and none other.

4158. The concession of jurisdiction to the United States over any part of the territory of the state, heretofore or hereafter made, shall not prevent the execution on such land of any process, civil or criminal, under the authority of this state, *nor prevent the laws* of this state from operating over such land; saving to the United States security to its property within the limits of the jurisdiction ceded, and exemption of the same, and of such land from taxation under the authority of this state during the continuance of the cession. (Emphasis Supplied)

It is to be noted that Article I; Section 8, Clause 17 of the Constitution of the United States provides that the land must be acquired with the consent of the "Legislature" of the particular state. The Mississippi statute above quoted has been in effect since 1892 and although the first section (4157) authorizes the "governor" to cede jurisdiction to the United States, the second section (4158) restricts the effect of such cession of jurisdiction by stating that same shall not prevent the laws of this state from operating over such land, and the governor therefore has no authority to cede jurisdiction to the extent that the laws of the state shall not continue to operate over such lands.

Apparently the laws of the various states differ as to the extent to which jurisdiction is ceded to the United States in the acquisition of territory for federal purposes, with some states ceding all jurisdiction exclusively to the United States and other states reserving concur-

rent jurisdiction with the federal government. To have some states regulate the price on milk sold to federal agencies and to eliminate such regulation in other states would not be completely desirable, but sometimes legal consistency produces practical inconsistency. Also, it is conceivable that different applications of state law would prevail as between military installations within the same state, when the cession statute provides certain conditions to be met by the United States prior to the acquisition of exclusive jurisdiction, in which case some military installations would have met the conditions while others have not.

It would certainly seem more practical and more in harmony with the co-existence of state and federal laws throughout the nation as a whole to eliminate the legal technicalities involved and establish a national policy which is in accord with the Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States, Government Printing Office, Volume 1, 1956, page 70, which states as follows:

> "With respect to the large bulk of federally owned or operated real property in the several states and outside of the District of Columbia, it is desirable that the federal government not receive, or retain, any measure whatever of legislative jurisdiction, but that it hold the installations and areas in a proprietorial interest and statutes only, with legislative jurisdiction remaining in the several states."

There are numerous related fields of state legislation which are recognized and required to be observed by federal agencies, in which cases the contractor must certify to the federal government that he has complied with certain state laws, such as minimum wage requirements, quality of construction, and various other matters

which result in an increase in the price of the product or service being furnished to the federal government. Government contractors can be required by the state to pay sales and use taxes upon materials used in a cost-plus fixed fee contract, *Alabama v. King & Boozer, et al.* 314 U.S. 1 (1941), *Curry Commissioner of Revenue of Alabama v. United States et al.* 314 U.S. 14 (1941), and to pay a nondiscriminatory advalorem tax on their possessory interest in government owned materials and equipment. *City of Detroit et al v. Murray Corporation of America et al.* 355 U.S. 489 (1958). The effect of these working and wage provisions and the impact of these taxes serve to increase the cost of goods and services purchased by the government. This being so, there is good reason for the respective states, acting to protect the public health, to require distributors selling milk to the United States to adhere to its minimum price requirements.

The United States is apparently contending that the United States has complete sovereignty over the territory involved and that the law of Mississippi or any other state as to such territory is as "foreign as is the law of China" (Mr. Justice Frankfurter dissenting, *Pacific Coast Dairy v. Department of Agriculture*, supra). The effect of this contention would be to deprive the residents of such territory of the privileges of state citizenship. For example, this would affect the rights of residents of such areas to have their children educated in the public schools, to vote, to hold public office, to sue for divorce, or to have their persons, property or affairs subject to probate in the state courts. Similarly, a state could, if it chose to do so under this theory, deny such a resident the privileges granted only to state citizens, such as the right of employment by the state or

local government, the right to receive a higher education at a state institution at a favorable tuition, the right to acquire hunting and fishing licenses at low cost, the right to receive visiting nursing service and care in county hospitals, and the right to receive the services of local departments of health. It is quite apparent that the residents on these federal installations would be willing, and in fact, would demand, the acknowledgment of their "rights" of state citizenship but that these same persons are unwilling and refuse to accept the "responsibilities" of such citizenship.

Therefore, it would certainly seem desirable and feasible to eliminate the legal technicalities, and inconsistencies that result therefrom, on the question of jurisdiction over the federal enclave, and to let the sole question in each case revolve upon a determination as to whether or not there exists a conflict between federal and state laws in each particular case and whether or not the state law would interfere with the particular function being performed by the United States on the territory involved. However, if such uniformity can not be achieved within the framework of the law, the State of Mississippi requests that this Court clarify its decision so as to permit Mississippi to continue to exercise concurrent jurisdiction over federal installations within this state in accordance with the cession statutes of Mississippi.

THE CONFLICT BETWEEN FEDERAL AND STATE LAWS UNDER THE SUPREMACY CLAUSE OF THE CONSTITUTION

In the case now being considered by this Court, it is the contention of the United States that the various state milk stabilization laws are in conflict with the Armed Forces Procurement Act of 1947, 10 U.S.C. 2304

et seq., 62 Stat. 21; in its requirement that supplies be procured through competitive bidding. This is their contention in spite of the fact that the same Congress of the United States has specifically declared in Section 204 (a) of the Agricultural Act of 1954, 68 Stat. 899, as follows:

> "The production and use of abundant supplies of high quality milk and dairy products are essential to the health and general welfare of the Nation; . . . and an economically sound industry affects beneficially the economy of the country as a whole. It is the policy of Congress to assure a stabilized annual production of an adequate supply of milk and dairy products . . . and to stabilize the economy of dairy farmers at a level which will provide a fair return for their labor and investment when compared to the cost of things that farmers buy."

The purposes and objectives of the various state milk stabilization laws are identical to this congressional policy. By this same congressional act, the Secretary of Agriculture of the United States is authorized to actually fix minimum producer prices throughout the United States. In the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 610 (1), the Secretary of Agriculture of the United States is *directed* to "confer with and hold joint hearings with the duly constituted authorities of any State; . . . to issue orders complimentary to orders and other regulations issued by such authorities; and to make available to such State authorities the records and facilities of the Department of Agriculture," all of which is in order to effectuate the declared policy of Congress and to "obtain uniformity in the formulation, administration and enforcement of federal and state programs" in the regulation of

agricultural products. By the Agricultural Marketing Agreement Act of 1937, Congress specifically requires the co-existence of federal and state laws in this field of regulation and has directed the United States Secretary of Agriculture to cooperate in the manner above stated. It would seem unbelievable that the same Congress which has stated its high regard for the welfare of the dairy producer should seek to nullify a state milk stabilization law which has the same legislative objective.

In this case the District Court held that the California milk stabilization laws conflicted with the Armed Forced Procurement Act of 1947, which was in complete disregard of the decision of the Supreme Court of the United States that held directly the opposite in the case of *Penn Dairies, Inc., et al. v. Milk Control Commission*, supra. The decision of the Supreme Court rendered in 1943 was based upon the fact that the procurement act in force at that time eliminated the requirement of competitive bidding for supplies or services "for which it is impracticable to secure competition", which is one of the identical exceptions allowed in the Armed Forces Procurement Act of 1947 and presently in effect as of this date.

An examination of the legislative history of the Armed Forces Procurement Act of 1947, 62 Stat. 22, 10 U.S.C. 2301 et seq. and its construction by the United States Supreme Court requires a negative answer to the claim of the United States. The 1947 federal procurement act was "a comprehensive revision and restatement" of the laws governing the procurement of supplies and services by the War and Navy Departments (House Report Number 109, 80th Congress, First Session, page 6, with previous statutes codified into the 1947 act being listed on pages 23-26; Senate Report

Number 571, 80th Congress, First Session, page 2). For example, the requirement that invitations for bids for goods and services be advertised (10 U.S.C. 2304 (a)) is derived from Section 10 of the Act of March 2, 1861, 12 Stat. 214, 220 which was codified into Section 3709 of the 1875 Revised Statutes. The authority in Section 2 (c)(10) of the Act (10 U.S.C. 2304 (a)(10)) allowing contracting by negotiation where "it is impracticable to secure competition" derives from the Appropriation Act of March 2, 1901, 31 Stat. 895, 905, 1875 Revised Statutes, Section 3721, 29 Stat. 370 (House Report Number 109, 80th Congress, First Session, page 8; Senate Report Number 571, 80th Congress, First Session, page 8).

While the requirement of advertising for bids was basic to the 1947 Act, the exceptions set forth in Section 2 (c) of the Act (10 U.S.C. 2304 (a)(1) to (17)) proved to be the rule. Under Section 2 (c)(3) of the Act (10 U.S.C. 2304 (a)(3)) contracts could be negotiated if the aggregate amount involved less than $1,000.00. Under this exception, 94% of the dollar value of all contracts executed under the Act between January 1, 1953, through June 30, 1955, were negotiated rather than advertised (House Report Number 1688, 84th Congress, Second Session, page 3).

Contracts could be negotiated if the purchase is for resale (10 U.S.C. 2304 (a)(8)); or if the purchase is for perishable subsistence supplies (10 U.S.C. 2304 (a)(9)). Purchases for resale were excepted from the advertising requirement since "Purchase for ship's stores, post exchanges, commissaries, and other similar operations are generally not made by specification but by brand names, with a view toward accommodating the different tastes and demands of persons availing them-

selves of their facilities. Also, inasmuch as government funds are not used or are not subject to the hazards of business loss, the goods being subject to resale, there is little need for a requirement that purchases be affected by advertising procedure. *It is quite necessary, on the other hand, to afford such activities the same leeway and discretion as privately owned and managed merchantile enterprises*" (House Report Number 109, 80th Congress, First Session, page 30). (Emphasis Added).

Since the Armed Services Procurement Act of 1947 incorporated these earlier federal statutes, the law remains that contractors selling milk to the federal government must comply with the state minimum milk price statutes. For example, 10 U.S.C. 2304 (a)(10) provides for the procurement of property by negotiation where "the purchase or contract is for property or services for which it is impractical to obtain competition." Senate Report Number 571, 80th Congress; First Session page 8 (1947), gives as an example of "impracticality" the situation where "prices are set by law or regulation . . . ." To the same effect is House Report Number 109, 80th Congress; First Session, page 3. Presumably in the case of milk, this "impracticality" would occur under either a state milk stabilization statute, or under any of the federal milk marketing orders promulgated under the Agricultural Marketing Agreement Act of 1937.

The federal procurement law for other federal agencies (41 U.S.C. 251 et seq.) also provides the same exception for negotiated rather than adv rtised prices by permitting same "for property or services for which it is impracticable to secure competition."

THE EFFECT OF STATE LAW UPON FEDERAL PROPERTY UNDER THE ASSIMILATIVE CRIMES ACT

Even if it were to be construed that the federal government had exclusive jurisdiction over the military or other federal installations, a violation of the orders of the Mississippi Milk Commission are made misdemeanors within the Milk Commission Act, and the criminal laws of the State of Mississippi would be operative therein by virtue of the Assimilative Crimes Act, 18 U.S.C. 13, which provides as follows:

> "Whoever, within or upon any of the places now existing or hereafter reserved or acquired as provided in Section 7 of this title, is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

The effect of this statute is to make state criminal laws effective upon federal installations and the federal government thereby adopts the state law as its own. Although this might be a matter of enforcement by federal officials, certainly it cannot be denied that a sale of milk below the minimum prices set by the Mississippi Milk Commission would be a violation of federal law and therefore any court would be bound to observe this federal law in any federal proceeding. At this point it should be again noted that the State of Mississippi would enforce the provisions of the Milk Commission Act against the licensee of the Commission, being the

milk dealer or handler, and not the federal agency itself. Also, the Supreme Court of the United States has specifically held that the Armed Forces Procurement Act is not in conflict with the state milk regulations. Therefore, a bid submitted by a milk dealer or handler to a federal agency at below the minimum prices fixed by the Milk Commission would not only be a violation of state law but would be a violation of federal law as well.

Previous enactments of the Assimilative Crimes Act specified a certain date therein, which meant that state laws enacted after said date were not assimilated, and previous court decisions so held. The statute as enacted in 1948 omits the specification of any date, which not only would adopt previous state laws but will authorize the federal courts to assimilate future state laws. In other words, the federal statute as now enacted makes offenses committed on such federal reservations the law of the place that would govern if the reservation had not been ceded to the United States.

There can be no doubt but that the Milk Commission Act is in effect on the federal land involved, the only question being whether same constitutes federal or state law and whether violations should be prosecuted in the state or federal courts.

CONCLUSION

Therefore, the State of Mississippi concurs with the State of California as to the legal questions involved in this case, and it is respectfully requested that this Court give this matter its utmost and careful consideration as the decision in this case will have a profound effect upon the dairy industry and the members of the consuming public within the State of Mississippi.

Respectfully submitted,

JOE T. PATTERSON
Attorney General of the
State of Mississippi

JOHN L. HATCHER
Attorney for the
Mississippi Milk Commission

CERTIFICATE OF SERVICE

The undersigned, as Attorney General for the State of Mississippi, do hereby certify that a true and correct copy of the foregoing amicus curiae brief on the merits was this day deposited by me in a United States Post Office or mail box, with air mail postage prepaid, addressed to the Solicitor General, Department of Justice, Washington 25, D.C.

This the 29th day of August, 1962.

Joe T. Patterson

Joe T. Patterson, Attorney General
for the State of Mississippi